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Effect of creditors on the restructuring and insolvency process in the UAE

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United Arab Emirates (UAE) law provides a framework for the restructuring and insolvency of commercial companies, contained in Federal Law No. 18 of 1993 issuing the Law of Commercial Procedure (Commercial Code). The UAE Federal Law No. 8 of 1984 on Commercial Companies (as amended) (Commercial Companies Law) contains provisions for the dissolution of a company. The abovementioned framework does not apply to all free zones within the UAE, including the Dubai International Financial Centre (a financial free zone).

The global economic crisis also impacted the UAE. There is no reported instance of the restructuring and insolvency laws having been tested in the UAE courts. However, if reliance on the UAE's restructuring and insolvency laws is sought, this is most likely to be by creditors, and creditors would be the driving force behind any insolvency and restructuring proceedings.

In terms of the Commercial Code, with certain exception, any commercial company may be declared bankrupt if the company ceases to pay its commercial debts when they fall due because of the disruption of its financial affairs. The managing director or the liquidator of a company may, subject to certain conditions, apply to a competent court for the company to be declared bankrupt. The creditor of a company may also apply to a competent court to have the company declared bankrupt. A paid agent called the 'trustee in bankruptcy' is appointed by the court to manage the bankrupt's estate.

The pronouncement of the bankruptcy judgment results in the suspension of individual proceedings and actions brought against the bankrupt by ordinary creditors or preferred creditors. When a bankruptcy judgment is pronounced, all monetary debts owed by the bankrupt become payable, whether ordinary or secured by a general or particular charge. Generally, any interest on ordinary loans due to the group of creditors cease when the bankruptcy judgment is pronounced.

In the course of bankruptcy proceedings, first priority is given to the following 'creditors': (i) wages and salaries due to workers and staff for the period of 30 days prior to the declaration of bankruptcy; (ii) amounts due to a trustee in bankruptcy where the trustee in bankruptcy pays a debt of the bankrupt from his own funds or if the debt is paid by another person, his debt is paid from the first monies to enter the bankrupt's estate; (iii) payment of government taxes due from the bankrupt for the two years preceding the pronouncement of the bankruptcy judgment; and (iv) certain rents payments to the owner of premises leased to the bankrupt.

Holders of debts secured by a pledge or lien on movable property or debts secured by mortgage or lien on immovable property are treated as secured creditors under the regime contained in the Commercial Code.

Any person is entitled to restitution from the bankrupt's estate in respect of specific items which such person can prove he owned at the time of the bankruptcy judgment.

The judge supervising the bankrupt's estate is required to invite creditors whose debts have been finally or provisionally accepted in the course of the bankruptcy proceedings to attend deliberations on a composition. A composition can only take place with the agreement of creditors and the fulfilment of the conditions prescribed by the Commercial Code. All the effects of bankruptcy are removed with the pronouncement of the court decision to ratify the composition. However, this does not affect any criminal prosecution.

Provisions and conditions for a composition to prevent the bankruptcy of a debtor are contained in the Commercial Code. In terms of the Commercial Code, a company whose financial affairs are so disturbed so as to lead to a suspension of payments may, within 20 days of such cessation, apply to a court for a composition with creditors. Such a composition is not available to a company which is in liquidation. The composition is concluded only with the approval of the requisite majority of creditors. If the application for a composition is accepted, the debtor is required to deposit with the Court a determined sum as a bond to meet the expenses of the proceedings.

The Commercial Companies Law provides for the dissolution of a company (including joint stock companies) in certain prescribed circumstances. An appointed liquidator oversees the dissolution of the company and payment of its debts. All debts of the company become due and owing upon the company's dissolution. If the company's assets are not sufficient to meet all of the debts, then the liquidator is required to make proportional payment of such debts, without prejudice to the rights of preferred creditors.

The Dubai World debt crisis in 2009 led to the promulgation of Decree No. 57 for 2009 (Establishing A Tribunal To Decide The Disputes Related To The Settlement Of the Financial Position of Dubai World And Its Subsidiaries). Pursuant to this law, it is anticipated that any dissolution or liquidation matters relating to Dubai World and its subsidiaries will be dealt with by a separate tribunal and procedure thereby departing from the Commercial Code and the Commercial Companies Law.

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